

# JOINT BUDGET COMMITTEE



## STAFF BUDGET BRIEFING FY 2019-20

### DEPARTMENT OF LAW

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STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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DECEMBER 18, 2018

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# DEPARTMENT OF LAW

## DEPARTMENT OVERVIEW

The Attorney General is one of five independently elected constitutional officers of the State, whose powers and duties are prescribed by the General Assembly<sup>1</sup>. As the chief executive officer of the Department of Law, the Attorney General represents and defends the legal interests of the people of the State of Colorado and, with the exception of the legislative branch<sup>2</sup>, serves as the legal counsel and advisor to all state agencies. The statutory responsibilities of the Department are summarized below.

### **Legal Counsel and Advice to the State**

- Provide state agencies and elected officials with legal services such as legal representation, legal advice and opinions, contract review, and rule writing assistance.

### **Civil Enforcement**

- Protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws.
- Represent the State's interests in interstate and federal water cases.
- Lead enforcement actions at sites contaminated with hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- Pursue civil recoveries and damages from Medicaid providers for fraud and over billing.
- Enforce provisions of the tobacco master settlement agreements and protect the State's interests under the settlement payment calculation provision.

### **Criminal Enforcement**

- Investigate and prosecute certain complex and multi-jurisdictional cases, environmental crimes, election fraud, and foreign fugitives.
- Provide investigative and prosecutorial support to district attorneys in complex homicides, cold cases, human trafficking cases, and large-scale drug conspiracies.
- Investigate and prosecute securities, insurance, and workers' compensation fraud.
- 
- Represent the State in criminal appeal cases in state and federal courts.
- Investigate and prosecute Medicaid provider fraud and patient abuse.
- Oversee the Peace Officers Standards and Training (P.O.S.T.) Board, which manages the training and certification of peace officers.
- Assure that the constitutional and statutory rights of victims are preserved in criminal cases being prosecuted or defended by the Department.

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<sup>1</sup> See Article IV, Section 1 of the Colorado Constitution and Article 31 of Title 24, C.R.S.

<sup>2</sup> Under certain circumstances the Legislative Branch does purchase legal services from the Department of Law, including requests for a legal opinion from the Attorney General or for legal representation when the interests of the Executive Branch and the Legislative Branch are consistent.

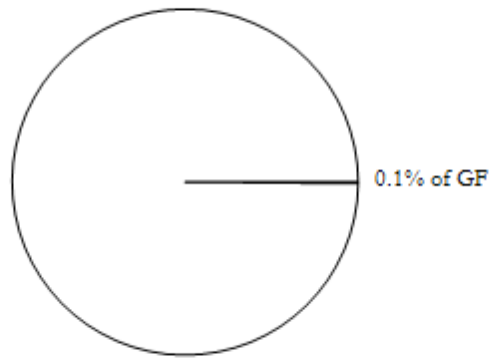
## DEPARTMENT BUDGET: RECENT APPROPRIATIONS

FUNDING SOURCE	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20 *
General Fund	\$15,190,519	\$16,214,183	\$16,611,039	\$17,880,293
Cash Funds	15,629,323	17,314,175	18,047,080	17,872,831
Reappropriated Funds	45,875,081	45,720,252	46,803,973	50,993,405
Federal Funds	1,785,637	1,828,471	2,002,322	2,085,548
<b>TOTAL FUNDS</b>	<b>\$78,480,560</b>	<b>\$81,077,081</b>	<b>\$83,464,414</b>	<b>\$88,832,077</b>
Full Time Equiv. Staff	484.5	473.4	477.2	483.9

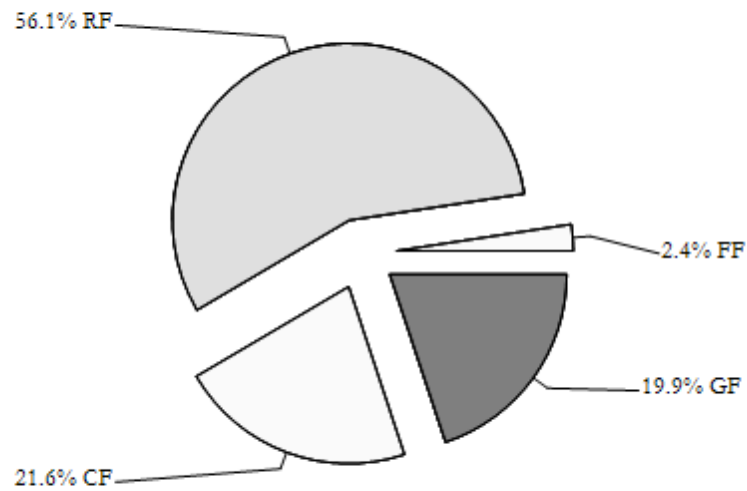
\*Requested appropriation.

## DEPARTMENT BUDGET: GRAPHIC OVERVIEW

**Department's Share of Statewide  
General Fund**

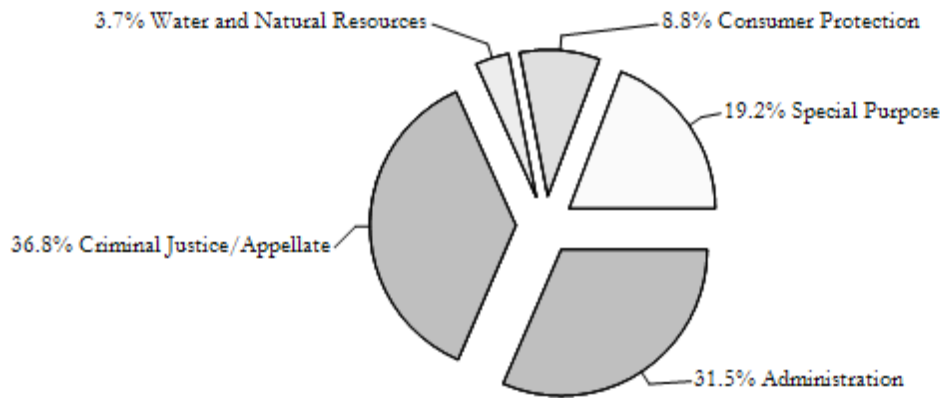


**Department Funding Sources**

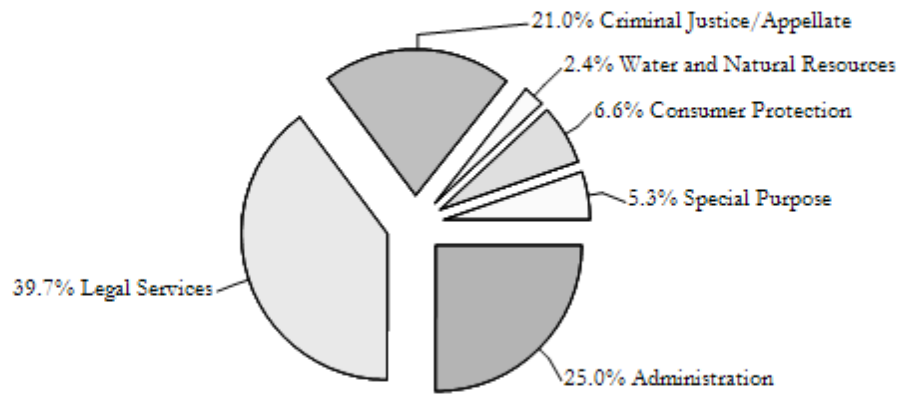


All charts are based on the FY 2018-19 appropriation.

### Distribution of General Fund by Division



### Distribution of Total Funds by Division



All charts are based on the FY 2018-19 appropriation.

## GENERAL FACTORS DRIVING THE BUDGET

### LEGAL SERVICES TO STATE AGENCIES

Prior to 1973, most state agencies were represented by "assistant solicitors" who were housed within and paid by the agencies they represented. The system became problematic as there were serious differences in legal policy between agencies, resulting in an inconsistent legal policy for the State in the courts. In 1973, the General Assembly passed legislation that moved all the assistant solicitors into the Department of Law, and prohibited any state agency from employing a person to perform legal services. As a trade-off, the Department of Law became subject to the "Oregon Plan," whereby the General Assembly appropriates money for legal services to the various state agencies, who in turn purchase services from the Department of Law at hourly rates (one rate for attorneys and one rate for legal assistants). The General Assembly provides spending authority to the Department of Law to spend money received from other state agencies.

Prior to FY 2017-18, the Department billed client agencies each month for the hours of legal services actually provided to the client during the previous month. For FY 2017-18, the General Assembly approved a departmental request to change the appropriation and billing system. Similar to other common policies, each client agency's annual appropriation is now based the client's prior years' usage of legal services. The Department is now billing each agency in twelve equal monthly installments rather than monthly bills based on actual usage.

For FY 2018-19, the General Assembly has authorized the Department of Law to spend up to \$41.1 million providing legal services to state agencies (including associated central appropriations for items such as employee benefits, leased space, and information technology costs). This amount represents 49.2 percent of the Department's total appropriation. As shown in the table below, eight agencies account for more than 84.0 percent of these services. The table also details the total number of hours of legal services provided and the blended hourly rate charged by the Department.

LEGAL SERVICES TO STATE AGENCIES: FY 2014-15 TO FY 2018-19

STATE DEPARTMENT	FY 14-15 ACTUAL	FY 15-16 ACTUAL	FY 16-17 ACTUAL	FY 17-18 ACTUAL	FY 18-19 APPROP./ ESTIM.	PERCENT OF TOTAL
Regulatory Agencies	\$9,965,585	\$8,480,393	\$9,053,456	\$10,112,352	\$10,021,244	24.4%
Personnel	4,262,304	4,440,913	4,565,137	7,288,282	5,273,083	12.8%
Natural Resources	5,105,845	4,881,713	4,761,792	5,433,175	5,508,277	13.4%
Revenue	3,971,975	3,839,366	4,096,760	4,218,602	4,370,044	10.6%
Public Health and Environment	2,958,702	3,024,527	2,966,184	3,266,490	3,266,490	8.0%
Human Services	2,122,858	1,995,197	2,173,268	2,263,270	2,336,860	5.7%
Corrections	1,985,056	1,728,433	1,768,814	1,869,702	2,030,978	4.9%
Transportation	1,488,468	1,480,174	1,335,102	1,576,768	1,670,132	4.1%
Other agencies <sup>1</sup>	6,068,147	5,761,599	5,935,443	6,718,670	6,605,006	16.1%
<b>Total Expenditures/ Appropriation</b>	<b>\$37,928,940</b>	<b>\$35,632,315</b>	<b>\$36,655,956</b>	<b>\$42,747,311</b>	<b>\$41,082,114</b>	<b>100.0%</b>
<i>% change of total from prior year</i>	14.4%	(6.1%)	2.9%	16.6%	(3.9%)	
<i>% of total Department of Law appropriations</i>	50.7%	45.8%	46.7%	52.7%	49.2%	
<i>% of total state operating appropriations</i>	0.2%	0.1%	0.1%	0.1%	0.1%	
<b>Blended Legal Rate</b>	<b>\$99.01</b>	<b>\$95.01</b>	<b>\$95.05</b>	<b>\$106.56</b>	<b>\$103.63</b>	
<i>% change from prior year</i>	8.7%	(4.0%)	0.0%	12.1%	(2.7%)	
<b>Total Hours</b>	<b>383,032</b>	<b>375,058</b>	<b>385,649</b>	<b>401,157</b>	<b>382,305</b>	
<i>% change from prior year</i>	5.2%	(2.1%)	2.8%	4.0%	(4.7%)	

<sup>1</sup>Actual expenditures are provided by the Department of Law. The appropriation columns include the Department's estimates of legal services to be provided to institutions of higher education and to the Public Employees' Retirement Association (PERA).

Fluctuations in legal services expenditures are due to: (1) changes in the Department's hourly rates; and (2) changes in the number of hours of legal services provided to state agencies by attorneys and legal assistants. The hourly rates fluctuate based on the costs of employee salaries and benefits as well as operating expenses.

Following approval of the new billing methodology, the Department was requested to conduct a survey of client agencies and report back to the Joint Budget Committee on the implementation of the changes. The Department reports that, for the most part, the change in methodology has had a positive reception. 69.0 percent of responses ("yes" or "no change") demonstrate that the change in methodology has had a positive, or no, impact in ensuring legal advice and representation needs were met and that fee setting and budget management decisions are more predictable.

## CRIMINAL JUSTICE AND APPELLATE

The largest allocation of General Fund in the Department is for the Criminal Justice and Appellate section, which accounts for 36.8 percent of General Fund appropriations to the Department for FY 2018-19. More than half of the General Fund in this section is devoted to the Appellate Unit, which represents the State in criminal appeals, and about one-third is devoted to the Special Prosecutions Unit, which investigates and prosecutes a variety of crimes. The following table provides expenditure and workload data for the Appellate Unit.

APPELLATE UNIT DATA: FY 2013-14 TO FY 2018-19						
	FY 13-14 ACTUAL	FY 14-15 ACTUAL	FY 15-16 ACTUAL	FY 16-17 ACTUAL	FY 17-18 ACTUAL	FY 18-19 APPROP./EST.
Expenditures/Appropriations (excluding central appropriations)	\$3,230,248	\$3,692,658	\$3,498,574	\$3,854,792	\$3,664,404	\$3,953,309
FTE	37.0	37.7	36.2	35.8	36.5	38.0
Opening briefs received	911	952	1,056	968	971	969
Answer briefs filed	1,149	1,017	911	931	943	1,023
Case backlog	320	264	428	466	494	440

## DISTRICT ATTORNEYS' SALARIES

The Colorado Constitution requires each judicial district to elect a district attorney. Similar to the Attorney General, district attorneys (DAs) are part of the executive branch of government and their powers and duties are prescribed by the General Assembly. Each DA is responsible for representing the legal interests of the people of the State of Colorado and prosecuting criminal cases for crimes committed within his or her judicial district on behalf of the people. Upon request, DAs provide legal advice and legal representation to county officers and employees, and render legal advice to peace officers pertaining to affidavits and warrants for arrests, searches, seizures, and court orders for the production of records.

While DAs' office budgets are primarily set and provided by their respective boards of county commissioners within each judicial district, the State provides direct funding for DAs, via state agencies, for certain purposes. The Department of Law's budget includes an annual appropriation for DA salaries. Pursuant to Section 20-1-306, C.R.S., the State contributes 80.0 percent of the funding for a minimum DA salary that is established in statute (including the associated costs of employer Public Employees' Retirement Association contributions). In 2007 (H.B. 07-1170), the General

Assembly raised the statutory minimum salary for DAs over a four-year period. A judicial district may choose to pay a salary that exceeds the statutory minimum using local funds.

The appropriation to the Department of Law for the State's contribution for DA salaries currently accounts for 16.6 percent of total General Fund appropriations to the Department. The following table details recent expenditures/appropriations for this purpose.

STATE EXPENDITURES FOR DISTRICT ATTORNEY SALARIES: FY 2007-08 TO FY 2018-19			
FISCAL YEAR	EXPENDITURES/ APPROPRIATIONS	ANNUAL INCREASE	CUMULATIVE INCREASE
2007-08	\$1,315,985	n/a	n/a
2008-09	1,654,605	\$338,620	\$338,620
2009-10	2,096,027	441,422	780,042
2010-11	2,263,229	167,202	947,244
2011-12	2,479,847	216,618	1,163,862
2012-13	2,656,471	176,624	1,340,486
2013-14	2,676,960	20,489	1,360,975
2014-15	2,697,640	20,680	1,381,655
2015-16	2,718,249	20,609	1,402,264
2016-17	2,738,841	20,592	1,422,856
2017-18	2,749,138	10,297	1,433,153
2018-19 appropriation	2,749,138	0	1,433,153

## SUMMARY: FY 2018-19 APPROPRIATION & FY 2019-20 REQUEST

DEPARTMENT OF LAW						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
<b>FY 2018-19 APPROPRIATION:</b>						
HB 18-1322 (Long Bill)	83,067,088	16,611,039	17,882,160	46,571,567	2,002,322	474.4
Other legislation	397,326	0	164,920	232,406	0	2.8
<b>TOTAL</b>	<b>\$83,464,414</b>	<b>\$16,611,039</b>	<b>\$18,047,080</b>	<b>\$46,803,973</b>	<b>\$2,002,322</b>	<b>477.2</b>
<b>FY 2019-20 REQUESTED APPROPRIATION:</b>						
FY 2018-19 Appropriation	\$83,464,414	16,611,039	\$18,047,080	\$46,803,973	\$2,002,322	477.2
R1 IT asset maintenance	485,493	139,765	68,752	264,160	12,816	0.0
R2 Appellate backlog	87,533	87,533	0	0	0	0.9
R3 FTE transfer from Consumer Protection to Administration	0	0	(142,449)	142,449	0	0.0
Centrally appropriated line items	3,742,723	898,231	342,162	2,458,796	43,534	0.0
Annualize prior year budget actions	544,670	256,001	(452,145)	731,902	8,912	0.0
Indirect cost assessment	356,990	(18,460)	240,784	124,737	9,929	0.0
Annualize prior year legislation	237,470	25,060	25,117	184,057	3,236	0.8
Non-prioritized request items	207,682	59,378	32,434	110,672	5,198	0.0
Technical adjustments	(294,898)	(178,254)	(288,904)	172,659	(399)	5.0
<b>TOTAL</b>	<b>\$88,832,077</b>	<b>\$17,880,293</b>	<b>\$17,872,831</b>	<b>\$50,993,405</b>	<b>\$2,085,548</b>	<b>483.9</b>
<b>INCREASE/(DECREASE)</b>	<b>\$5,367,663</b>	<b>\$1,269,254</b>	<b>(\$174,249)</b>	<b>\$4,189,432</b>	<b>\$83,226</b>	<b>6.7</b>
Percentage Change	6.4%	7.6%	(1.0%)	9.0%	4.2%	1.4%

**R1 IT ASSET MAINTENANCE:** The request includes a one-time increase of \$485,493 total funds in FY 2019-20, including \$139,765 General Fund, to address continuity of operations infrastructure and replace network equipment that is at end of life and no longer supported by vendors. The request also includes an ongoing increase of \$290,678, including \$83,683 General Fund, beginning in FY 2020-21 to address the annual replacement of the Department's IT infrastructure and expand storage to meet data growth trends.

**R2 APPELLATE BACKLOG:** The request includes an increase of \$87,533 General Fund and 0.9 FTE in FY 2019-20 to reduce and control the growing criminal appeal backlog. This item is discussed in the second briefing issue.

**R3 FTE TRANSFER FROM CONSUMER PROTECTION TO ADMINISTRATION:** The Department proposes to refinance 2.0 FTE and \$142,449 cash funds from the Consumer Protection Custodial Fund to reappropriated funds from indirect cost recoveries. In FY 2017-18, the Department received funding to support 1.0 FTE for social media and public information activities, as well as 1.0 FTE to oversee the administration of grants made from custodial funds. While these FTE spend significant time on Consumer Protection efforts, their work supports the entire office and the Department believes the FTE are a better fit in the Administration division.

**CENTRALLY APPROPRIATED LINE ITEMS:** The request includes an increase of \$3,742,723 total funds (including \$898,231 General Fund) related to employee benefits and other centrally appropriated items. The following table summarizes the requested changes.

CENTRALLY APPROPRIATED LINE ITEMS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
PERA Direct Distribution	\$1,173,886	\$339,646	\$146,797	\$687,443	\$0	0.0
Merit pay adjustment	1,123,958	312,488	141,039	636,400	34,031	0.0
Health, life, and dental adjustment	477,760	81,329	(37,798)	435,617	(1,388)	0.0
Salary survey adjustment	456,721	99,787	1,915	349,397	5,622	0.0
AED adjustment	183,870	14,282	37,290	130,281	2,017	0.0
SAED adjustment	183,870	14,282	37,290	130,281	2,017	0.0
Payments to OIT adjustment	60,995	16,771	7,018	35,897	1,309	0.0
Carr Center leased space adjustment	59,058	11,849	5,927	41,490	(208)	0.0
Payment to risk management / property funds adjustment	29,345	8,054	4,021	16,601	669	0.0
Workers' compensation adjustment	21,413	5,921	2,554	12,461	477	0.0
Legal services adjustment	9,471	4,609	4,862	0	0	0.0
CORE adjustment	(30,940)	(8,892)	(4,609)	(16,579)	(860)	0.0
ALJ adjustment	(4,429)	0	(4,429)	0	0	0.0
Short-term disability adjustment	(2,255)	(1,895)	285	(493)	(152)	0.0
<b>TOTAL</b>	<b>\$3,742,723</b>	<b>\$898,231</b>	<b>\$342,162</b>	<b>\$2,458,796</b>	<b>\$43,534</b>	<b>0.0</b>

The Department's request includes the statewide merit pay increase, as well as an additional salary survey increase for attorneys, as outlined in the table below. The request is based on findings from the 2018 market survey conducted by the Department.

ATTORNEY SALARY SURVEY AND MERIT PAY REQUEST			
ATTORNEY CLASS	RECOMMENDED TOTAL PAY ADJUSTMENT	SUGGESTED SALARY SURVEY	SUGGESTED MERIT
Deputies	8.6%	6.5%	2.0%
Firsts	7.9%	5.8%	2.0%
Seniors	3.2%	1.2%	2.0%
Asst. Attorneys General	8.0%	5.9%	2.0%

**ANNUALIZE PRIOR YEAR BUDGET ACTIONS:** The request includes adjustments related to prior year budget actions, primarily decision items. The following table itemizes the requested annualizations for FY 2018-19.

ANNUALIZE PRIOR YEAR BUDGET ACTIONS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Prior year salary survey	\$1,054,076	\$257,177	\$52,558	\$731,902	\$12,439	0.0
FY 17-18 R6 Two year peace officer training	(500,000)	0	(500,000)	0	0	0.0
FY 18-19 R1 Medicaid fraud investigator	(4,703)	(1,176)	0	0	(3,527)	0.0
FY 18-19 R2 POST compliance inspector	(4,703)	0	(4,703)	0	0	0.0
<b>TOTAL</b>	<b>\$544,670</b>	<b>\$256,001</b>	<b>(\$452,145)</b>	<b>\$731,902</b>	<b>\$8,912</b>	<b>0.0</b>

**INDIRECT COST ASSESSMENT ADJUSTMENTS:** The request includes a net increase in the Department's indirect cost assessments.

**ANNUALIZE PRIOR YEAR LEGISLATION:** The request includes adjustments to reflect the FY 2019-20 impact of legislation passed in prior years, including the adjustments shown in the following table.

ANNUALIZE PRIOR YEAR LEGISLATION						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
SB 18-200 (PERA)	\$129,198	\$25,060	\$15,449	\$85,453	\$3,236	0.0
HB 18-1017 (Psychology Interjurisdictional Compact)	90,576	0	0	90,576	0	0.5
SB 15-288 (Compensation Paid to Certain Public Officials)	20,281	0	0	20,281	0	0.0
HB 18-1434 (Safe2Tell)	9,668	0	9,668	0	0	0.4
SB 18-027 (Enhanced Nurse Licensure Compact)	8,525	0	0	8,525	0	0.0
SB 18-271 (Funding for Marijuana Research)	(10,656)	0	0	(10,656)	0	(0.1)
SB 18-243 (Retail Sales Alcohol Beverages)	(4,262)	0	0	(4,262)	0	0.0
SB 18-145 (Implement Employment First Recommendations)	(2,131)	0	0	(2,131)	0	0.0
SB 18-167 (Enforcement Requirements 811 Locate Underground)	(2,131)	0	0	(2,131)	0	0.0
HB 18-1353 (Defense Counsel in Municipal Courts)	(1,598)	0	0	(1,598)	0	0.0
<b>TOTAL</b>	<b>\$237,470</b>	<b>\$25,060</b>	<b>\$25,117</b>	<b>\$184,057</b>	<b>\$3,236</b>	<b>0.8</b>

**NON-PRIORITIZED REQUEST ITEMS:** The request includes two decision items originating in other departments. The following table summarizes the non-prioritized requests, which will be addressed in separate staff briefings.

NON-PRIORITIZED REQUEST ITEMS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
OIT R2 and R5	\$192,204	\$55,052	\$27,474	\$104,480	\$5,198	0.0
DPA Annual fleet vehicle request	15,478	4,326	4,960	6,192	0	0.0
<b>TOTAL</b>	<b>\$207,682</b>	<b>\$59,378</b>	<b>\$32,434</b>	<b>\$110,672</b>	<b>\$5,198</b>	<b>0.0</b>

**TECHNICAL CHANGES:** The request includes five technical changes, as detailed in the table below.

TECHNICAL ADJUSTMENTS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Attorney registration and CLE adjustment	\$3,563	\$475	\$0	\$3,088	\$0	0.0
Additional grant from CDPS	1,539	0	0	1,539	0	0.0
Fund source adjustment	0	(178,729)	11,096	168,032	(399)	0.0
Additional FTE fellows	0	0	0	0	0	5.0
Tobacco litigation reduction	(300,000)	0	(300,000)	0	0	0.0
<b>TOTAL</b>	<b>(\$294,898)</b>	<b>(\$178,254)</b>	<b>(\$288,904)</b>	<b>\$172,659</b>	<b>(\$399)</b>	<b>5.0</b>

## ISSUE: MAJOR LITIGATION PENDING AGAINST THE STATE

The Department of Law submits an annual report to the State Controller discussing pending litigation against the State that could have a significant financial impact. The 2018 report includes cases involving the Department of Corrections related to hepatitis C medications for inmates and deliberate indifference to medical need; the Department of Health Care Policy and Financing related to hepatitis C drugs for Medicaid beneficiaries, operations at the Pueblo Regional Center, and the hospital provider fee; the Department of Human Services related to an assault at a youth correctional facility; the Department of Natural Resources related to water litigation; the Department of Public Health and Environment related to the Heartland Biogas Facility and the death of a child while in the care of a licensed child care provider; the Department of Revenue related to tax collections; and the Department of State related to the financing of elections.

### SUMMARY

The following ongoing legal cases involving the State could have a significant financial impact:

#### Department of Corrections

- *Hepatitis C Drugs for Inmates*

#### Health Care Policy and Financing

- *Pueblo Regional Center CMS Report*
- *Hepatitis C Drugs for Medicaid Beneficiaries*
- *Hospital Provider Fee*

#### Natural Resources

- *Rio Grande River Compact*

#### Public Health and Environment

- *Heartland Biogas Facility State Court Litigation*

#### Revenue

- *Agilent Technologies Tax Case*
- *Oracle Corp. & Subsidiaries Tax Case*

#### State

- *Election Funding*

### RECOMMENDATION

Staff recommends that the Committee ask the Department to discuss the status of the various cases listed in the report, as well as any other cases the Attorney General believes warrant the Committee's attention, at the Department's upcoming hearing.

## DISCUSSION

The Department of Law submits an annual report to the State Controller concerning pending or threatened litigation, claims, and assessments involving significant dollar amounts, brought against the State and to which the Department has devoted substantial attention on behalf of the State. The Department's annual report describes the nature and status of each case, the claims asserted by the plaintiff and the objectives and/or damages sought, how management is responding to the litigation, the Attorney General's evaluation of the likelihood of an unfavorable outcome, and an estimate as to the amount or range of potential loss. This annual report does not, however, include information about two types of cases or claims:

As the Department does not represent the General Assembly (except in cases under the Risk Management Fund) or the University of Colorado Board of Regents, this report excludes information about cases brought against these two entities.

Although notices of claims in the nature of tort must be filed with the Attorney General pursuant to the Colorado Governmental Immunity Act (CGIA)<sup>3</sup>, the Department of Personnel's State Risk Management Office and the State Claims Board have the responsibility to investigate, adjust, and settle such claims before they become lawsuits<sup>4</sup>. All tort and federal claims alleging damages against state agencies and employees, if settled, are to be paid out of the Risk Management Fund to the limits of the CGIA. Thus, the report excludes information about claims that have not resulted in lawsuits.

The Department submitted the 2018 annual report to the State Controller on September 10, 2018, and provided an updated report on December 10, 2018. Based on the report, as well as additional information from the Department of Law, staff has provided a brief summary of unresolved cases in which the potential financial impact, either through damages, attorneys' fees and costs, or the cost of state compliance with court orders, exceeds \$5 million. In cases where the Plaintiff has alleged more than \$5 million in damages, but the law limits the plaintiff's potential recovery to an amount less than \$5 million (such as damage caps provided by the Colorado Governmental Immunity Act), the litigation is not included in this report. The cases are organized by department, in the same order as they are listed on the previous page.

### **Corrections**

#### ***Hepatitis C Drugs for Inmates***

*Case.* On July 19, 2017, the plaintiffs filed a class action asserting that the denial and/or delay in the provision of "breakthrough" direct acting anti-viral medications recently approved by the Food and Drug Administration (FDA) for Hepatitis C patients violated inmates' constitutional rights. The plaintiffs argue that the community standard of care now, as endorsed by major medical associations, requires treating all chronic Hepatitis C patients with the direct acting anti-viral medications and that the Department of Corrections (DOC) is delaying/denying this treatment based upon unconstitutional eligibility criteria. The plaintiffs are not seeking damages but are seeking declaratory and injunctive relief requiring the State to pay for these drugs for all Hepatitis C patients, as well as attorney fees.

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<sup>3</sup> See Section 24-10-109, C.R.S.

<sup>4</sup> See Section 24-30-1501, *et seq.*, C.R.S.

*Status.* DOC requested, and the General Assembly approved, \$20.5 million in FY 2018-19 for Hepatitis C treatment. Following this appropriation, the parties have reached a settlement agreement. Pursuant to this agreement, DOC will exhaust the allocation in FYs 2018-19 and 2019-20, and the parties will request the case be administratively closed. If FY 2019-20 funding is not provided, the plaintiffs may request for the case to be reopened.

*Financial Impact:* Parties have agreed to resolve the plaintiffs request for attorney fees and costs in the amount of \$175,000.

### **Health Care Policy and Financing**

#### ***Pueblo Regional Center CMS Report***

*Case.* In April 2015, the Department of Health Care Policy and Financing (HCPF) reported a number of serious incidents at the Pueblo Regional Center (PRC) to the Center for Medicare and Medicaid Services (CMS). In response, CMS conducted a detailed review of PRC documentation of the incidents and an on-site visit of the Pueblo Regional Center in 2016. In August 2016, the CMS sent the Department of Health Care Policy and Financing (HCPF) a report of its findings and requested development of a corrective action plan. The CMS asserts that HCPF violated federal administrative requirements regarding administration of the Medicaid Home and Community Based Services waiver program for the developmentally disabled. At this point, the CMS claims involve care provided pursuant to the waiver to approximately 60 individuals between November 2014 and November 2015.

The CMS seeks disallowances of payments to HCPF for services provided at the Pueblo Regional Center between at least November 1, 2014, and November 2015, and possibly beyond. The CMS also sought the development and implementation of a corrective action plan within twelve months, which is underway and a moratorium on admissions to the Pueblo Regional Center, which occurred until the Center met certain benchmarks and the parties jointly agreed to lift the moratorium on August 15, 2018.

*Status.* On September 26, 2016, HCPF submitted its proposed Corrective Action Plan to CMS, which initiated an ongoing process of negotiation between HCPF and CMS. HCPF and CMS continue to exchange information in an effort to resolve concerns raised by CMS. Following the CMS response to the initial HCPF submission, HCPF filed a federal administrative appeal with the Department of Health and Human Services in October 2016 to dispute the scope of the corrective action plan and any proposed remedial sanctions. However, that appeal has been stayed to allow the parties to attempt to negotiate a resolution.

*Financial Impact:* The CMS has not provided an amount for the disallowances. However, information from HCPF and CMS suggests the disallowances may exceed \$5 million.

#### ***Hepatitis C Drugs for Medicaid Beneficiaries***

*Case.* On April 13, 2017, three plaintiffs filed a case seeking a permanent injunction enjoining the Department of Health Care Policy and Financing (HCPF) from enforcing its prior authorization criteria for the direct acting anti-viral drugs to treat Hepatitis C in Medicaid beneficiaries. Under previous authorization criteria, HCPF limited the use of these medications to Hepatitis C patients meeting specific criteria. The plaintiffs assert that the medications are medically necessary for all individuals diagnosed with Hepatitis C and that any Medicaid recipient for whom a doctor has prescribed the medications should have access to the medications.

*Status.* The original three plaintiffs filed the class action on April 13, 2017. An amended complaint was filed on May 9, 2017, adding a fourth plaintiff. The plaintiffs filed a motion to certify a class and, over the Department's objections, the court certified the class. While the lawsuit was pending, HCPF underwent its yearly review of all criteria required for approval of treatment with certain classes of medications, including the anti-viral drugs. During this process, the criteria at issue was eliminated (effective January 1, 2018).

Because the criteria was eliminated through the ordinary course of evaluating authorization requirements, the parties to the lawsuit have agreed to settle Plaintiffs' claims. The parties are in the process of having a written settlement agreement approved by the Court.

*Financial Impact:* Risk Management has approved a settlement award of \$64,500 for attorneys' fees and cost for a modest incentive award.

### ***Hospital Provider Fee***

*Case.* In June 2015, the TABOR Foundation sued the Department of Health Care Policy and Financing claiming that the hospital provider fee is a tax rather than a fee and thus requires a vote of the Colorado electorate before it may be levied or increased. The original complaint challenged the fee imposed in FY 2010-11, FY 2011-12, and FY 2012-13 and sought a refund of all revenue collected, kept, or spent unconstitutionally, plus interest.

On June 30, 2017, the plaintiff filed an amended complaint adding additional claims to: (1) include the additional fiscal years for the hospital provider fee since the suit was filed; (2) challenge the Colorado Healthcare Affordability and Sustainability Enterprise (CHASE, established in S.B. 17-267) as not meeting the definition of an enterprise; (3) challenge the CHASE fee as being a tax; (4) challenge the failure to fully adjust the TABOR spending limit in S.B. 17-267; and (5) challenge S.B. 17-267 as violating the constitutional single subject requirements.

*Status.* The plaintiffs filed the complaint in Denver District Court on June 26, 2015. The Department filed a motion to dismiss on September 2, 2015, the plaintiffs responded, and the Department filed a reply on October 16, 2015. The motion was fully briefed and pending before the district court for 20 months when plaintiffs filed an amended complaint. Per the court's order, on September 8, 2017, the Department filed a supplement to the motion to dismiss adding grounds to dismiss the new claims made in the amended complaint. On September 25, 2017, the Colorado Hospital Association filed a motion to intervene in the case, and which was granted on December 11, 2017. The parties filed cross-motions for summary judgment, which were fully briefed on August 20, 2018, and later argued before the District Court. After finding that the issues can be resolved on summary judgment, the Court vacated the five-day bench trial that was set to commence on October 29, 2018. A ruling has yet to be made.

*Financial Impact.* According to the Department, the estimated range of potential losses exceeds \$5.59 billion (through FY 2018-19), plus 10 percent annual simple interest and additional fees collected on an ongoing basis.

### **Natural Resources**

#### ***Rio Grande Compact Litigation***

*Case.* Texas filed suit against New Mexico for alleged violation of the Rio Grande Compact, asserting that New Mexico is consuming more water than allowed under the Compact. No claims have been

made against Colorado at this time – and New Mexico and Texas have indicated they do not want to involve Colorado any more than necessary – but the State is listed as a defendant because it is a signatory to the Compact.

*Status.* The case was filed in January 2013 and was accepted by the U.S. Supreme Court. New Mexico filed a motion to dismiss, and oral arguments were heard in August 2015. Oral arguments for exceptions to the Special Master's First Interim Report occurred on January 8, 2018. In March, the Court issued its ruling, allowing the U.S. to pursue claims under the Compact under very narrow conditions, and denying New Mexico's motion to dismiss. As of July 2018, the case is at issue, and the parties have commenced discovery, with a tentative trial date anticipated for 2020. Due to the protracted timeline and extended timeframe associated with litigation, the case is expected to last years.

*Financial Impact.* No specific dollar amount has been identified against Colorado. Depending on the court's interpretation of the Compact, either Texas or New Mexico (or both) may seek damages in the future.

### **Public Health and Environment**

#### ***Heartland Biogas Facility State Court Litigation***

*Case.* Heartland Biogas also filed a state suit against the Colorado Department of Agriculture and the Colorado Department of Public Health and Environment. The claims, arising from the voluntary closure of the company's biogas facility, allege that the State agencies are liable under a theory of promissory estoppel and that the State's actions constituted a regulatory taking.

*Status.* The Department moved to dismiss the case. The court granted the motion to dismiss as to the promissory estoppel claims but denied the motion as to the regulatory takings claim. Heartland has now filed an amended complaint reviving the promissory estoppel claims, which the State objected to. A status conference was scheduled for December 3, 2018, and the court allowed the plaintiff to amend the complaint to add Weld County to the lawsuit. Weld County will be allowed to file a response, discovery will continue, and the court will set a new trial date. A trial is not currently set.

*Financial Impact:* The plaintiff is seeking more than \$100 million in compensatory damages. The Department indicates that the likelihood of an unfavorable outcome in this case is uncertain.

### **Revenue**

#### ***Agilent Technologies, Inc. Tax Case***

*Case.* In June 2014, Agilent Technologies, Inc. appealed the Department of Revenue's Notice of Final Determination to the Denver District Court, challenging the Department's determination of income tax, penalties, and interest for the period from June 3, 2000 through October 31, 2007. At issue in the case is the State income tax treatment of dividends paid to a holding company by foreign subsidiaries and whether the income of the holding company must be combined and included in the parent company's return and apportioned.

*Status.* The Department of Revenue prevailed after an administrative hearing, and Agilent appealed the Notice of Final Determination to the Denver District Court in June 2015. The parties to the case filed cross motions for determination of a question of law as well as cross motions for summary judgment. On January 20, 2016, the district court denied the Department of Revenue's motions for summary judgment and granted those filed by Agilent. The District Court entered its judgment and the Department appealed the case to the Court of Appeals on May 17, 2016. The parties completed

briefing and the Court of Appeals heard oral arguments on August 15, 2017. The Court of Appeals ruled in the taxpayer's favor on November 2, 2017. The Colorado Supreme Court issued a Writ of Certiorari on several issues and the parties are briefing the matters.

The Department reports that the issues in this case are novel issues in Colorado and that authorities across the country are split on many of the controlling issues.

*Financial Impact.* The amount at issue is \$13,720,507. The taxpayer has paid this tax pending the outcome of the proceedings. In the event of a loss, the State would pay interest on this amount in the form of a refund of the amount at issue plus statutory interest.

### ***Oracle Corp. & Subsidiaries v. Department of Revenue***

*Case.* In April 2015, the Oracle Corporation and subsidiaries appealed the Department of Revenue's Notice of Final Determination to the Denver District Court, challenging the Department's determination of income tax, penalties, and interest for the period from June 1, 1999 through May 31, 2005. At issue in the case is the State income tax treatment of proceeds from the sale of stock received by Oracle's subsidiaries and whether the income of these subsidiaries must be combined and included in the parent company's return and apportioned.

*Status.* The Department of Revenue prevailed after an administrative hearing and Oracle appealed the Notice of Final Determination to the Denver District Court. The parties filed cross motions for summary judgment and argued those motions to the Court. On February 26, 2016, the District Court denied the Department's motion and granted Oracle's but determined that one issue could not be resolved on motions and stated that the remaining issue would be scheduled for trial. The parties settled the one issue that could not be resolved on motions. The District Court entered its judgment and the Department appealed the case to the Court of Appeals. The Court of Appeals ruled in the taxpayer's favor on November 30, 2017. The Colorado Supreme Court issued a Writ of Certiorari on several issues and the parties are briefing the matters.

Similar to the Agilent Technologies case discussed above, the Department reports that the issues in this case are novel issues in Colorado and that authorities across the country are split on many of the controlling issues.

*Financial Impact.* The amount at issue is \$22,262,299, including \$20,448,602 assessed by the Department of Revenue's Final Determination and \$1,813,697 that Oracle alleges as overpayment (although the Department of Revenue disputes a portion of the overpayment). In the event of a loss, the State would pay interest on the total amount in the form of a refund of the amounts plus statutory interest.

### **State**

#### ***Election Funding***

*Case.* In December 2014, the National Federation of Independent Business (NFIB) sued the Secretary of State alleging that the use of business filing fees to support elections violates the Taxpayers Bill of Rights (TABOR).

*Status.* The parties filed cross-motions for summary judgement in Denver District Court in June 2015 and argued those motions in September 2015. On November 3, 2015, the Denver District Court issued an order granting summary judgement for the State. The Court did not decide whether the business and licensing fees are taxes but found that the statutory provisions authorizing the funding

structure for the Secretary of State's office predate TABOR's enactment and are therefore not subject to challenge under TABOR. The Plaintiff filed a timely appeal to the Colorado Court of Appeals, and the matter was fully briefed. In an unpublished decision, the Court of Appeals reversed the trial court's grant of summary judgment in favor of the Secretary and remanded the case for further factual development on the question of whether and to what extent the Secretary's fees have increased post-TABOR's enactment. The parties filed a joint petition for rehearing that was summarily denied, and then each party cross-petitioned for a writ of certiorari. Unless NFIB requests an extension of time to file its Reply Brief, the appeal will stand fully briefed on January 3, 2019, and oral arguments will likely be set sometime thereafter.

*Financial Impact.* The plaintiffs seek a refund of allegedly unconstitutionally collected registration fees and the imposition of penalties, interest, fees, and costs. The complaint does not seek a precise monetary award but the Department estimates potential exposure of approximately \$20 million. The Department notes a possibility that a decision with precedential value may implicate similar funding mechanisms in other state departments, which could implicate a significantly larger amount.

## ISSUE: R2 APPELLATE BACKLOG

The Department's request includes \$87,533 General Fund and 0.9 FTE in FY 2019-20 to reduce the growing criminal appeal backlog, which was 466 cases in FY 2017-18, and is expected to grow to 494 in FY 2018-19.

### SUMMARY

- The Appellate Unit represents the prosecution when defendants challenge felony convictions before either state appellate courts or the federal courts. As a result of increasing workload, the Unit developed a backlog of appellate cases and has been working for several years to reduce the backlog. The backlog has been an ongoing topic of conversation for the Committee and the General Assembly for several years.
- In FY 2013-14, the General Assembly appropriated \$551,436 General Fund to add 6.0 attorney FTE to address the backlog of appellate cases. Based on the Department's original projections of workload and reductions in the backlog, the FY 2013-14 decision item assumed that 1.0 FTE could be eliminated at the end of FY 2015-16 (that position was eliminated for the FY 2016-17 budget) and an additional 3.0 FTE could be eliminated at the end of FY 2016-17. In FY 2017-18, the General Assembly approved a Department request to retain the 3.0 FTE slated to be eliminated, in order to address the continued backlog.
- The Department's FY 2019-2020 budget request includes \$87,533 General Fund and 0.9 FTE to continue to address the backlog, with a goal of reducing the backlog to roughly 120 cases by FY 2024-25.

### RECOMMENDATION

Staff anticipates recommending approval of the request, but questions whether 1.0 FTE will fully address the longstanding and systemic issue of the backlog. Staff recommends that the Committee discuss this request, and the future outlook for the workload of the Appellate Unit, with the Department at the upcoming hearing. Staff also recommends that the Committee continue to monitor the Appellate Unit's backlog through an annual request for information and adjust the unit's staffing levels as necessary based on actual data.

### DISCUSSION

#### BACKGROUND – APPELLATE UNIT

The Appellate Unit handles all *criminal* appeals for the department, representing the prosecution when a defendant challenges his/her felony conviction before the state appellate courts or the federal courts.<sup>5</sup> Most of the cases handled by this unit are in the Colorado Court of Appeals, with the remainder in the Colorado Supreme Court and the federal courts. For each case, an Appellate Division attorney must review the trial court record and the brief filed by the defense, do legal research into the defendant's claims, and file at least one brief in response.

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<sup>5</sup> See Sections 16-12-101 and 24-31-101 (1) (a), C.R.S.

Since at least FY 2012-13, Committee's and the General Assembly's discussions of the unit have focused on the appellate backlog – the cases where the unit is under a deadline for filing a principal brief (an “answer brief” or an “opening brief”). This is subset of the unit's total caseload, which also includes cases where the principal brief has been filed, but the case is not completely resolved, as well as cases where the defendant is the appellant but has not yet filed an opening brief.

The Appellate Division is reactive and does not have control over its incoming caseload. While the number of incoming cases has remained fairly steady in the last few years (roughly 950-1,000), the Department cites several reasons for the increased workload within the Appellate Unit: increasingly complex briefs filed by the defense, the Court of Appeals emphasizing the importance of thorough responses, and an increased number of certiorari petitions in the US Supreme Court. Delays in processing an appeal presents challenges in case preparation for all parties. For instance, witnesses may no longer be available, memories may fade, and evidence can be lost. Additionally, the Unit must balance turning around cases with appropriately addressing legal matters. Any case published in state or federal appellate courts can affect other cases.

The Unit would consider a backlog of 60 to 120 cases, which translates to two or three cases in each attorney's queue, to be reasonable. This would allow briefs to be filed within a single, 35 day extension (beyond the initial 35 day deadline).

The table below includes the backlog for the Unit each year since FY 2012-13, as well as the number of incoming cases, briefs filed, and attorney FTE.

APPELLATE UNIT WORKLOAD AND CASE BACKLOG								
	FY 2012-13 ACTUAL	FY 2013-14 ACTUAL	FY 2014-15 ACTUAL	FY 2015-16 ACTUAL	FY 2016-17 ACTUAL	FY 2017-18 ACTUAL	FY 2018-19 EST.	FY 2019-20 EST.
Incoming Cases	1,018	911	952	1,056	968	971	969	1,000
Briefs Filed	885	1,149	1,017	911	931	943	1,023	1,053
Attorney FTE	26.3	32.0	32.0	31.2	31.2	30.9	31.1	32.0
Briefs per Attorney	33.7	35.9	31.8	29.2	29.8	30.5	32.9	32.9
Case Backlog	398	320	264	428	466	494	440	387
Change in Backlog	n/a	(78)	(56)	164	(38)	(28)	54	53

## PREVIOUS REQUESTS

### *FY 2013-14*

For FY 2013-14, in response to growth in the backlog, the General Assembly approved an increase of \$551,436 General Fund to add 6.0 attorney FTE to the unit. As requested by the Department, the General Assembly approved 4.0 of the 6.0 new FTE on a time-limited basis, eliminating 1.0 FTE at the end of FY 2015-16 (this position was eliminated in the FY 2016-17 budget) and 3.0 additional FTE at the end of FY 2016-17 (for the FY 2017-18 budget). Thus, as approved by the General Assembly, the original decision item only included 2.0 of the additional FTE in FY 2017-18 and beyond.

### *FY 2017-18*

Since the staffing increase in FY 2013-14, the Department has provided annual updates regarding the appellate backlog. As shown in the previous table, the unit's case backlog decreased through FY 2014-

15. However, the backlog increased again in FY 2015-16. In the FY 2017-18 request, the Department identified two significant factors with respect to the increasing backlog:

- First, the unit's workload has increased. The number of cases and required briefs increased overall, driven in part by the expansion of the Appellate Section within the Office of the State Public Defender (OSPD) in FY 2014-15. In addition, the complexity of briefs increased, increasing the time required for each brief.
- Second, the backlog figures for FY 2013-14 and FY 2014-15 did not align with the data previously submitted by the Department. When compiling the data for FY 2015-16, the Department realized that a calculation error had understated the backlog in the Department's responses for FY 2013-14 (272 vs. 320 in the 2017 report) and FY 2014-15 (168 vs. 264 in the 2017 report).

The General Assembly approved the FY 2017-18 request to retain 3.0 attorney FTE originally provided during the FY 2013-14 budget cycle. While the FY 2013-14 budget action anticipated that the 3.0 FTE would no longer be necessary after FY 2016-17, the appropriation maintains funding and staff based in increasing appellate workload.

### FY 2019-20 REQUEST

The Department requests \$87,533 General Fund and 0.9 FTE in FY 2019-20, annualizing to \$91,616 and 1.0 FTE in FY 2020-21 and beyond. The Department anticipates that an additional FTE will ensure that the Unit can annual reduce the backlog over the next seven years.

Using FY 2019-20 estimates of 1,000 incoming cases, 1,053 total briefs filed (32.9 per attorney), and 32.0 FTE, the Department estimates the following reduction in the backlog each year.

ESTIMATES WITH ADDITIONAL 1.0 FTE	
	ESTIMATED BACKLOG
FY 2020-21	334
FY 2021-22	281
FY 2022-23	228
FY 2023-24	175
FY 2024-25	122
FY 2025-26	69

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
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### DEPARTMENT OF LAW Cynthia Coffman, Attorney General

#### (1) ADMINISTRATION

This section includes funding for the Attorney General, the Solicitor General, and other management staff, as well as the Department's human resources, accounting/budgeting, information technology, and legal support services units. These units are supported by General Fund and indirect cost recoveries. This section also includes central appropriations for the entire Department, including funding for employee benefits, facilities, vehicles, and information technology. Cash funds appropriations include moneys received by the Attorney General as an award of attorney fees or costs, and various other sources. Reappropriated funds derive from indirect cost recoveries and moneys transferred from a variety of other appropriations. For FY 2014-15 and subsequent years, federal funds are from the Medicaid Fraud Control Program. Prior years included federal funding from the Colorado Justice Review Project.

Personal Services	<u>3,582,615</u>	<u>3,842,758</u>	<u>3,962,891</u>	<u>4,298,562</u> *
FTE	39.0	39.3	46.2	48.2
General Fund	0	0	0	0
Cash Funds	0	0	0	0
Reappropriated Funds	3,582,615	3,842,758	3,962,891	4,298,562
Federal Funds	0	0	0	0
Office of Community Engagement	<u>700,521</u>	<u>802,157</u>	<u>984,728</u>	<u>1,014,313</u>
FTE	5.6	6.6	8.6	9.0
General Fund	700,107	790,593	802,308	821,925
Cash Funds	414	0	182,420	192,388
Reappropriated Funds	0	11,564	0	0
Federal Funds	0	0	0	0

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Health, Life, and Dental	<u>3,789,903</u>	<u>4,100,333</u>	<u>4,446,369</u>	<u>4,924,129</u>	
General Fund	1,014,768	1,138,267	1,214,540	1,295,869	
Cash Funds	450,192	514,081	630,564	592,766	
Reappropriated Funds	2,234,782	2,343,126	2,457,733	2,893,350	
Federal Funds	90,161	104,859	143,532	142,144	
Short-term Disability	<u>75,164</u>	<u>78,820</u>	<u>80,820</u>	<u>78,565</u>	
General Fund	20,214	20,652	22,619	20,724	
Cash Funds	8,464	9,237	9,336	9,621	
Reappropriated Funds	44,602	47,214	46,767	46,274	
Federal Funds	1,884	1,717	2,098	1,946	
S.B. 04-257 Amortization Equalization Disbursement	<u>1,898,869</u>	<u>2,074,232</u>	<u>2,126,857</u>	<u>2,310,727</u>	
General Fund	510,666	543,479	595,245	609,527	
Cash Funds	213,828	243,079	245,682	282,972	
Reappropriated Funds	1,126,779	1,242,481	1,230,722	1,361,003	
Federal Funds	47,596	45,193	55,208	57,225	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>1,879,090</u>	<u>2,074,232</u>	<u>2,126,857</u>	<u>2,310,727</u>	
General Fund	505,347	543,479	595,245	609,527	
Cash Funds	211,601	243,079	245,682	282,972	
Reappropriated Funds	1,115,042	1,242,481	1,230,722	1,361,003	
Federal Funds	47,100	45,193	55,208	57,225	
PERA Direct Distribution	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,173,886</u>	
General Fund	0	0	0	339,646	
Cash Funds	0	0	0	146,797	
Reappropriated Funds	0	0	0	687,443	

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Salary Survey for Classified Employees	<u>8,276</u>	<u>219,348</u>	<u>403,959</u>	<u>0</u>	
General Fund	1,861	72,892	136,002	0	
Cash Funds	857	57,135	112,053	0	
Reappropriated Funds	5,558	76,997	131,697	0	
Federal Funds	0	12,324	24,207	0	
Salary Survey for Exempt Employees	<u>0</u>	<u>589,217</u>	<u>1,071,536</u>	<u>1,510,797</u>	
General Fund	0	136,893	274,637	356,964	
Cash Funds	0	35,824	52,558	54,473	
Reappropriated Funds	0	411,605	731,902	1,081,299	
Federal Funds	0	4,895	12,439	18,061	
Merit Pay for Classified Employees	<u>0</u>	<u>95,651</u>	<u>0</u>	<u>391,291</u>	
General Fund	0	31,786	0	105,287	
Cash Funds	0	24,915	0	116,057	
Reappropriated Funds	0	33,576	0	144,230	
Federal Funds	0	5,374	0	25,717	
Merit Pay for Exempt Employees	<u>0</u>	<u>226,847</u>	<u>0</u>	<u>732,667</u>	
General Fund	0	58,514	0	207,201	
Cash Funds	0	15,474	0	24,982	
Reappropriated Funds	0	150,724	0	492,170	
Federal Funds	0	2,135	0	8,314	
Workers' Compensation	<u>101,393</u>	<u>128,404</u>	<u>189,682</u>	<u>211,095</u>	
General Fund	28,528	35,929	54,227	60,148	
Cash Funds	11,694	17,224	27,465	30,019	
Reappropriated Funds	58,446	71,908	102,871	115,332	
Federal Funds	2,725	3,343	5,119	5,596	

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Attorney Registration and Continuing Legal Education	<u>117,082</u>	<u>117,700</u>	<u>128,345</u>	<u>131,908</u>	
General Fund	24,931	25,857	33,393	33,868	
Cash Funds	3,085	3,525	4,275	4,275	
Reappropriated Funds	89,066	87,324	89,252	92,340	
Federal Funds	0	994	1,425	1,425	
Operating Expenses	<u>187,018</u>	<u>204,676</u>	<u>200,057</u>	<u>202,917</u> *	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	187,018	204,676	200,057	202,917	
Federal Funds	0	0	0	0	
Legal Services	<u>24,699</u>	<u>21,845</u>	<u>25,766</u>	<u>35,237</u>	
General Fund	4,643	10,630	12,538	17,147	
Cash Funds	20,056	11,215	13,228	18,090	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Administrative Law Judge Services	<u>1,602</u>	<u>7,819</u>	<u>5,736</u>	<u>1,307</u>	
General Fund	0	0	0	0	
Cash Funds	1,602	7,819	5,736	1,307	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Payment to Risk Management and Property Funds	<u>253,820</u>	<u>255,052</u>	<u>203,937</u>	<u>233,282</u>	
General Fund	71,416	71,366	58,414	66,468	
Cash Funds	29,271	34,212	29,153	33,174	
Reappropriated Funds	146,310	142,835	110,855	127,456	
Federal Funds	6,823	6,639	5,515	6,184	

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Vehicle Lease Payments	<u>41,907</u>	<u>35,950</u>	<u>66,876</u>	<u>82,354</u>	*
General Fund	20,935	21,105	31,194	35,520	
Cash Funds	4,903	6,340	16,300	21,260	
Reappropriated Funds	15,798	8,235	18,842	25,034	
Federal Funds	271	270	540	540	
Information Technology Asset Maintenance	<u>765,610</u>	<u>829,612</u>	<u>833,595</u>	<u>1,319,088</u>	*
General Fund	217,258	237,994	240,818	379,748	
Cash Funds	83,059	97,694	120,189	186,802	
Reappropriated Funds	450,137	474,148	450,184	717,717	
Federal Funds	15,156	19,776	22,404	34,821	
Ralph L. Carr Colorado Judicial Center Leased Space	<u>3,202,517</u>	<u>3,261,575</u>	<u>3,320,577</u>	<u>3,379,635</u>	
General Fund	890,498	924,384	951,100	962,949	
Cash Funds	359,473	383,833	474,670	480,597	
Reappropriated Funds	1,865,577	1,867,046	1,805,014	1,846,504	
Federal Funds	86,969	86,312	89,793	89,585	
Payments to OIT	<u>239,473</u>	<u>653,023</u>	<u>639,107</u>	<u>892,306</u>	
General Fund	66,554	182,720	182,709	254,532	
Cash Funds	26,914	87,594	92,539	127,031	
Reappropriated Funds	139,502	365,710	346,610	486,987	
Federal Funds	6,503	16,999	17,249	23,756	
CORE Operations	<u>62,453</u>	<u>59,305</u>	<u>81,395</u>	<u>50,455</u>	
General Fund	17,572	16,420	23,268	14,376	
Cash Funds	7,202	7,987	11,785	7,176	
Reappropriated Funds	36,001	33,348	44,145	27,566	
Federal Funds	1,678	1,550	2,197	1,337	

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Attorney General Discretionary Fund	<u>3,510</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	
General Fund	3,510	5,000	5,000	5,000	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
<b>TOTAL - (1) Administration</b>	16,935,522	19,683,556	20,904,090	25,290,248	21.0%
<i>FTE</i>	<u>44.6</u>	<u>45.9</u>	<u>54.8</u>	<u>57.2</u>	4.4%
General Fund	4,098,808	4,867,960	5,233,257	6,196,426	18.4%
Cash Funds	1,432,615	1,800,267	2,273,635	2,612,759	14.9%
Reappropriated Funds	11,097,233	12,657,756	12,960,264	16,007,187	23.5%
Federal Funds	306,866	357,573	436,934	473,876	8.5%

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
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### (2) LEGAL SERVICES TO STATE AGENCIES

The Department provides legal services on a fee-for-service basis to state agencies and enterprises. This section includes appropriations for the attorneys, legal assistants, and support personnel who provide these services. In most cases, the appropriations in this section are reflected as reappropriated funds because a duplicate appropriation for the purchase of legal services appears in the client agency's budget. Cash funds reflect payments the Department receives from state agencies that are not duplicated in appropriations elsewhere in the budget.

Personal Services	<u>25,796,032</u>	<u>26,614,607</u>	<u>27,998,821</u>	<u>28,955,422</u>	
FTE	245.7	251.7	245.9	251.3	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	25,796,032	26,614,607	27,998,821	28,955,422	
Federal Funds	0	0	0	0	
Operating and Litigation	<u>771,273</u>	<u>1,140,933</u>	<u>1,868,535 0.0</u>	<u>1,876,367 0.0</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	500,000	500,000	
Reappropriated Funds	771,273	1,140,933	1,368,535	1,376,367	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>3,255,833</u>	<u>3,140,956</u>	<u>3,266,800</u>	<u>3,551,391</u>	
General Fund	0	0	0	0	
Cash Funds	1,054,580	1,245,355	1,080,050	1,267,356	
Reappropriated Funds	2,201,253	1,895,601	2,186,750	2,284,035	
Federal Funds	0	0	0	0	
<b>TOTAL - (2) Legal Services to State Agencies</b>	29,823,138	30,896,496	33,134,156	34,383,180	3.8%
FTE	<u>245.7</u>	<u>251.7</u>	<u>245.9</u>	<u>251.3</u>	<u>2.2%</u>
General Fund	0	0	0	0	0.0%
Cash Funds	1,054,580	1,245,355	1,580,050	1,767,356	11.9%
Reappropriated Funds	28,768,558	29,651,141	31,554,106	32,615,824	3.4%
Federal Funds	0	0	0	0	0.0%

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
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### (3) CRIMINAL JUSTICE AND APPELLATE

This division investigates and prosecutes fraud involving insurance, securities, Medicaid, and workers' compensation. It also handles foreign prosecutions, certifies peace officers, provides support to district attorneys in certain cases, and represents the state in criminal appeals. When the Department is involved in criminal appeals or in trial court criminal prosecution, this division is responsible for keeping crime victims informed about the case. Cash fund sources include moneys paid by insurance companies for the investigation and prosecution of insurance fraud, fees paid by peace officers for P.O.S.T. Board certification, the Marijuana Tax Cash Fund, and a statewide vehicle registration fee to support training for peace officers. Reappropriated funds are transferred from the Department of Regulatory Agencies and the Department of Public Safety. Federal funds are from the U.S. Department of Health and Human Services' Medicaid Fraud Control Program.

Special Prosecutions Unit	<u>4,041,071</u>	<u>4,492,295</u>	<u>4,329,311</u>	<u>4,460,237</u>	
FTE	37.3	36.4	38.8	38.8	
General Fund	1,987,697	2,023,919	2,112,247	2,180,540	
Cash Funds	1,379,634	1,618,242	1,450,385	1,491,217	
Reappropriated Funds	673,740	850,134	766,679	788,480	
Federal Funds	0	0	0	0	
Auto Theft Prevention Grant	<u>272,875</u>	<u>258,852</u>	<u>294,005</u>	<u>295,544</u>	
FTE	2.0	1.7	2.0	2.0	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	272,875	258,852	294,005	295,544	
Federal Funds	0	0	0	0	
Appellate Unit	<u>3,748,235</u>	<u>3,664,404</u>	<u>3,953,309</u>	<u>4,129,108</u>	*
FTE	35.8	36.5	38.0	38.9	
General Fund	3,188,694	3,367,705	3,528,230	3,685,569	
Cash Funds	0	0	0	0	
Reappropriated Funds	559,541	0	425,079	443,539	
Federal Funds	0	296,699	0	0	

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Medicaid Fraud Control Unit	<u>1,613,178</u>	<u>1,662,678</u>	<u>1,861,114</u>	<u>1,909,587</u>	
FTE	15.1	15.5	17.0	17.0	
General Fund	414,951	413,880	465,274	477,392	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	1,198,227	1,248,798	1,395,840	1,432,195	
Peace Officers Standards and Training Board Support	<u>5,106,069</u>	<u>5,699,664</u>	<u>6,413,701</u>	<u>5,931,929</u>	
FTE	10.1	10.0	14.0	14.0	
General Fund	0	0	0	0	
Cash Funds	5,106,069	5,699,664	6,413,701	5,931,929	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>480,154</u>	<u>572,690</u>	<u>635,471</u>	<u>672,687</u>	
General Fund	0	0	0	0	
Cash Funds	287,476	342,933	379,147	401,351	
Reappropriated Funds	82,136	87,032	86,776	91,859	
Federal Funds	110,542	142,725	169,548	179,477	
<b>TOTAL - (3) Criminal Justice and Appellate</b>	15,261,582	16,350,583	17,486,911	17,399,092	(0.5%)
FTE	<u>100.3</u>	<u>100.1</u>	<u>109.8</u>	<u>110.7</u>	<u>0.8%</u>
General Fund	5,591,342	5,805,504	6,105,751	6,343,501	3.9%
Cash Funds	6,773,179	7,660,839	8,243,233	7,824,497	(5.1%)
Reappropriated Funds	1,588,292	1,196,018	1,572,539	1,619,422	3.0%
Federal Funds	1,308,769	1,688,222	1,565,388	1,611,672	3.0%

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
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### (4) WATER AND NATURAL RESOURCES

This section provides funding for department staff who protect and defend the interests of the State and its citizens in all areas of natural resources law and environmental law, including the use of surface and ground water, oil and gas development, mining and minerals, wildlife, the clean-up of contaminated sites, the proper storage or disposal of hazardous waste, and protection of the state's air and water. Cash fund sources include the Colorado Water Conservation Board's Litigation Fund and moneys received by the Attorney General as an award of attorney fees or costs. Reappropriated funds are transferred from the Department of Public Health and Environment from the Hazardous Substance Response Fund.

Federal and Interstate Water Unit	<u>553,436</u>	<u>538,282</u>	<u>612,122</u>	<u>629,459</u>
FTE	5.1	4.7	5.5	5.5
General Fund	553,436	538,282	612,122	629,459
Cash Funds	0	0	0	0
Reappropriated Funds	0	0	0	0
Federal Funds	0	0	0	0
Defense of the Colorado River Basin Compact	<u>315,970</u>	<u>433,597</u>	<u>428,639</u>	<u>442,877</u>
FTE	2.7	3.5	3.5	3.5
General Fund	0	433,597	0	0
Cash Funds	315,970	0	428,639	442,877
Reappropriated Funds	0	0	0	0
Federal Funds	0	0	0	0
Defense of the Republican River Compact	<u>81,890</u>	<u>39,887</u>	<u>110,000</u>	<u>110,000</u>
General Fund	0	0	0	0
Cash Funds	81,890	39,887	110,000	110,000
Reappropriated Funds	0	0	0	0
Federal Funds	0	0	0	0

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
Consultant Expenses	<u>120,491</u>	<u>66,592</u>	<u>275,000</u>	<u>275,000</u>	
General Fund	0	0	0	0	
Cash Funds	120,491	66,592	275,000	275,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Comprehensive Environmental Response, Compensation and Liability Act	<u>227,566</u>	<u>202,647</u>	<u>510,462</u>	<u>531,548</u>	
FTE	2.6	2.4	3.5	3.5	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	227,566	202,647	510,462	531,548	
Federal Funds	0	0	0	0	
Indirect Cost Assessment	<u>46,367</u>	<u>45,465</u>	<u>46,726</u>	<u>49,462</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	46,367	45,465	46,726	49,462	
Federal Funds	0	0	0	0	
<b>TOTAL - (4) Water and Natural Resources</b>	1,345,720	1,326,470	1,982,949	2,038,346	2.8%
FTE	<u>10.4</u>	<u>10.6</u>	<u>12.5</u>	<u>12.5</u>	0.0%
General Fund	553,436	971,879	612,122	629,459	2.8%
Cash Funds	518,351	106,479	813,639	827,877	1.7%
Reappropriated Funds	273,933	248,112	557,188	581,010	4.3%
Federal Funds	0	0	0	0	0.0%

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
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### (5) CONSUMER PROTECTION

This section provides funding for department staff who protect Colorado consumers against fraud and enforce state and federal consumer protection, antitrust, charitable solicitation, consumer lending, and fair debt collection laws. This section also provides funding to support one attorney who is responsible for enforcing the tobacco master settlement agreements and protecting the State's interests under the settlement payment calculation provision. Cash fund sources include fees paid by regulated entities, custodial moneys awarded to the Attorney General in consumer protection lawsuits, and tobacco settlement moneys. Reappropriated funds are transferred from the Department of Regulatory Agencies for consumer protection activities related to mortgage brokers.

Consumer Protection and Antitrust	<u>3,126,926</u>	<u>3,310,189</u>	<u>3,201,684</u>	<u>3,179,029</u> *
FTE	29.8	30.8	33.2	31.2
General Fund	1,318,996	1,308,344	1,467,712	1,515,759
Cash Funds	1,560,928	(275,275)	1,594,121	1,514,506
Reappropriated Funds	247,002	2,117,182	139,851	148,764
Federal Funds	0	159,938	0	0
Consumer Credit Unit	<u>1,630,582</u>	<u>1,557,374</u>	<u>1,758,393</u>	<u>1,810,553</u>
FTE	18.5	17.7	20.0	20.0
General Fund	0	0	0	0
Cash Funds	1,630,582	1,557,374	1,758,393	1,810,553
Reappropriated Funds	0	0	0	0
Federal Funds	0	0	0	0
Indirect Cost Assessment	<u>463,671</u>	<u>500,111</u>	<u>554,034</u>	<u>586,481</u>
General Fund	0	0	0	0
Cash Funds	423,928	0	534,009	565,283
Reappropriated Funds	39,743	480,626	20,025	21,198
Federal Funds	0	19,485	0	0

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
<b>TOTAL - (5) Consumer Protection</b>	5,221,179	5,367,674	5,514,111	5,576,063	1.1%
<i>FTE</i>	<u>48.3</u>	<u>48.5</u>	<u>53.2</u>	<u>51.2</u>	<u>(3.8%)</u>
General Fund	1,318,996	1,308,344	1,467,712	1,515,759	3.3%
Cash Funds	3,615,438	1,282,099	3,886,523	3,890,342	0.1%
Reappropriated Funds	286,745	2,597,808	159,876	169,962	6.3%
Federal Funds	0	179,423	0	0	0.0%

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
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### (6) SPECIAL PURPOSE

The section includes funding to cover 80 percent of the statutory minimum salary for Colorado's twenty-two district attorneys, for unanticipated legal and technology expenses, and for litigation expenses associated with significant lawsuits. Cash fund sources include tobacco settlement moneys, moneys received from State Board of Land Commissioners from its Investment and Development Fund, and moneys received by the Attorney General as an award of attorney fees or costs.

District Attorneys' Salaries	<u>2,738,841</u>	<u>2,749,138</u>	<u>2,749,138</u>	<u>2,749,138</u>	
General Fund	2,738,841	2,749,138	2,749,138	2,749,138	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Deputy District Attorney Training	<u>405,000</u>	<u>405,000</u>	<u>350,000</u>	<u>350,000</u>	
General Fund	405,000	405,000	350,000	350,000	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Litigation Management	<u>18,773</u>	<u>175,981</u>	<u>200,000</u>	<u>200,000</u>	
General Fund	0	0	0	0	
Cash Funds	18,773	175,981	200,000	200,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Tobacco Litigation	<u>853,479</u>	<u>759,110</u>	<u>1,050,000</u>	<u>750,000</u>	
General Fund	0	0	0	0	
Cash Funds	853,479	759,110	1,050,000	750,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

## Appendix A: Numbers Pages

	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Appropriation	FY 2019-20 Request	Request vs. Appropriation
CORA OML Attorney	<u>86,129</u>	<u>75,790</u>	<u>93,059</u>	<u>96,010</u>	
FTE	0.8	0.7	1.0	1.0	
General Fund	86,129	75,790	93,059	96,010	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
<b>TOTAL - (6) Special Purpose</b>	4,102,222	4,165,019	4,442,197	4,145,148	(6.7%)
FTE	<u>0.8</u>	<u>0.7</u>	<u>1.0</u>	<u>1.0</u>	<u>0.0%</u>
General Fund	3,229,970	3,229,928	3,192,197	3,195,148	0.1%
Cash Funds	872,252	935,091	1,250,000	950,000	(24.0%)
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%
<b>TOTAL - Department of Law</b>	72,689,363	77,789,798	83,464,414	88,832,077	6.4%
FTE	<u>450.1</u>	<u>457.5</u>	<u>477.2</u>	<u>483.9</u>	<u>1.4%</u>
General Fund	14,792,552	16,183,615	16,611,039	17,880,293	7.6%
Cash Funds	14,266,415	13,030,130	18,047,080	17,872,831	(1.0%)
Reappropriated Funds	42,014,761	46,350,835	46,803,973	50,993,405	9.0%
Federal Funds	1,615,635	2,225,218	2,002,322	2,085,548	4.2%

## APPENDIX B

### RECENT LEGISLATION AFFECTING DEPARTMENT BUDGET

#### 2017 SESSION BILLS

**S.B. 17-126 (DOMESTIC VIOLENCE FATALITY REVIEW BOARD):** Creates the Colorado Domestic Violence Fatality Review Board in the Department of Law, to be chaired by a designee of the Attorney General and to include between 17 and 20 members. Members include representatives from the forensic, domestic violence, law enforcement, prosecutor, and judicial communities and serve without compensation but may receive per diem and reimbursement for costs. Charges the board with: examining data collected by review teams during the previous year; identifying measures to help prevent domestic violence fatalities and near-death incidents; establishing uniform methods for collecting, analyzing, and storing data related to domestic violence fatalities and near-death incidents; and making annual reports and recommendations concerning domestic violence to the General Assembly. For FY 2017-18, appropriates \$19,750 total funds, including \$17,250 General Fund and \$2,500 cash funds from the Colorado Domestic Violence Fatality Review Board Cash Fund, to the Department of Law.

**S.B. 17-196 (DEPARTMENT OF LAW INFORMATION TECHNOLOGY SECURITY):** Modifies FY 2016-17 appropriations to the Department to add \$144,776 total funds, including \$51,572 General Fund, to improve the Department's information technology (IT) security based on the recommendations of an external audit of the Department's IT security systems and procedures.

**S.B. 17-197 (LEGAL SERVICES FOR DEPARTMENT OF EDUCATION):** Modifies FY 2016-17 appropriations to the Department to add \$171,090 reappropriated funds and 1.0 FTE to support additional legal services provided to the Department of Education.

**S.B. 17-198 (PUBLIC PARTICIPATE REVIEW ACQUIRE CONTROL INSURER):** Expands the public notice for the acquisition of either a domestic or foreign insurer that offers health plans in the state by requiring the Commissioner of Insurance within the Department of Regulatory Agencies (DORA) to make the entire pre-acquisition notification available for public inspection promptly after filing. For FY 2017-18, provides \$9,505 reappropriated funds to the Department of Law for the provision of legal services to DORA.

**S.B. 17-216 (SUNSET CONTINUE FAIR DEBT COLLECTIONS ACT):** Continues the Colorado Fair Debt Collection Practices Act for 11 years, through September 1, 2028. Also implements the recommendation from the Department of Regulatory Agencies sunset report that the Collection Agency Board be repealed. For FY 2017-18, appropriates \$6,640 cash funds from the Collection Agency Cash Fund to the Department of Law.

**S.B. 17-254 (LONG BILL):** General appropriations act for FY 2017-18.

**H.B. 17-1221 (GREY AND BLACK MARKET MARIJUANA ENFORCEMENT EFFORTS):** Creates the Gray and Black Market Marijuana Enforcement Grant Program in the Department of Local Affairs (DOLA). Also creates an offense for a person who is not a primary caregiver for possessing a

marijuana plant that the person is growing on behalf of another person. For FY 2017-18, appropriates \$4,753 reappropriated funds to the Department of Law for the provision of legal services to DOLA.

**H.B. 17-1284 (DATA SYSTEM CHECK FOR EMPLOYEES SERVING AT-RISK):** Requires certain employers to conduct a records check of the Colorado adult protective services (CAPS) data system for prospective employees to determine if a prospective employee who will work directly with at-risk adults is the subject of a substantiated report of adult abuse or neglect. For FY 2017-18, appropriates \$428,779 General Fund to the Department of Human Services (DHS). Also appropriates \$42,773 reappropriated funds and 0.3 FTE to the Department of Law to assist with rules promulgation in FY 2017-18.

**H.B. 17-1313 (CIVIL FORFEITURE REFORM):** Requires criminal justice agencies involved in the seizure of property to submit biannual seizure reports to the Department of Local Affairs (DOLA), and requires DOLA to establish and maintain a searchable public access database for seizure-related information. Imposes restrictions and requirements on an agency's ability to receive forfeiture proceeds from the federal government, a joint task force, or multi-jurisdictional collaboration. Requires DOLA to submit annual reports summarizing seizure and forfeiture activity in the state to the Governor, Attorney General, and General Assembly beginning December 31, 2019. For FY 2017-18, appropriates \$4,753 reappropriated funds to the Department of Law for the provision of legal services to DOLA.

**H.B. 17-1326 (JUSTICE REINVESTMENT CRIME PREVENTION INITIATIVE):** Changes maximum parole revocation periods for technical parole violations. Establishes a new crime-prevention program in the Department of Local Affairs (DOLA) to provide small business loans and grants that are designed to reduce crime and promote community development in the target communities of north Aurora and southeast Colorado Springs. For FY 2017-18, appropriates \$4,753 reappropriated funds to the Department of Law for the provision of legal services to DOLA.

**H.B. 17-1367 (AUTHORIZE MARIJUANA CLINICAL RESEARCH):** Creates two research licenses in the Medical Marijuana Code to be issued by the Marijuana Enforcement Division in the Department of Revenue (DOR) and local licensing authorities. For FY 2017-18, appropriates \$226,671 cash funds from the Marijuana Cash Fund to the DOR, of which \$95,050 is reappropriated to the Department of Law for the provision of legal services to DOR.

## 2018 SESSION BILLS

**S.B. 18-027 (ENHANCED NURSE LICENSURE COMPACT):** Adopts the Enhanced Nurse Licensure Compact (enhanced compact) and repeals the existing Nurse Licensure Compact. Requires all registered and licensed practical nurses licensed after July 20, 2017, to complete a fingerprint-based criminal history check in order to participate in the compact. Grandfathers nurses holding a multi-state license prior to July 20, 2017, into the enhanced compact. For FY 2018-19, appropriates \$93,773 reappropriated funds and 0.5 FTE to the Department of Law for the provision of legal services to the Department of Regulatory Agencies (DORA).

**S.B. 18-145 (IMPLEMENT EMPLOYMENT FIRST RECOMMENDATIONS):** Implements recommendations from the 2017 Employment First Advisory Partnership. Contingent upon appropriations to the Department of Health Care Policy and Financing (HCPF), requires the Colorado

Department of Labor and Employment (CDLE), in conjunction with the Medical Services Board in HCPF, to promulgate rules by July 1, 2019, requiring training or certification for certain supported employment services providers. For FY 2018-19, appropriates \$2,131 reappropriated funds to the Department of Law for the provision of legal services to the CDLE.

**S.B. 18-167 (ENFORCE REQUIREMENTS 811 LOCATE UNDERGROUND):** Creates the Underground Damage Prevention Safety Commission (commission) in the Colorado Department of Labor and Employment (CDLE) to support increased enforcement related to the excavation of underground facilities. Requires Colorado 811 to enter into a memorandum of understanding with the newly created commission and to provide administrative support to the commission. For FY 2018-19, appropriates \$12,787 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to the CDLE.

**S.B. 18-234 (HUMAN REMAINS DISPOSITION SALE BUSINESSES):** Makes it unlawful for a person owning an indirect or direct interest in a funeral establishment or a crematory to own an indirect or direct interest in a nontransplant tissue bank. Requires each nontransplant tissue bank to register with the Department of Regulatory Agencies (DORA) by July 1, 2019, and requires nontransplant tissue banks to pay registration and renewal fees set by DORA, comply with standards of practice as specified in the bill, have body part delivery records, and disclose donor information. Authorizes DORA to initiate disciplinary actions against nontransplant tissue banks. For FY 2018-19, appropriates \$5,328 reappropriated funds to the Department of Law for the provision of legal services to the DORA.

**S.B. 18-243 (RETAIL SALES OF ALCOHOL BEVERAGES):** Changes state law related to retail sales of alcohol. For FY 2018-19, appropriates \$10,656 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to the Department of Revenue.

**S.B. 18-271 (IMPROVE FUNDING FOR MARIJUANA RESEARCH):** Allows a marijuana research and development licensee or a marijuana research and development cultivation licensee to share premises with a commonly owned medical marijuana infused products manufacturer or a retail marijuana product manufacturers under a co-location permit. House Bill 18-1322 (Long Bill) transferred \$3.0 million from the Marijuana Tax Cash Fund to the health research subaccount of the Medical Marijuana Program Cash Fund. This bill continues the subaccount from its current repeal date of July 1, 2019, to July 1, 2023, and authorizes the Department of Public Health and Environment (CDPHE) to use up to \$100,000 from the subaccount for administration of the medical marijuana research grant program. For FY 2018-19, appropriates \$10,656 reappropriated funds to the Department of Law for the provision of legal services to the Department of Revenue.

**H.B. 18-1017 (PSYCHOLOGY INTERJURISDICTIONAL COMPACT):** Enters Colorado into the Psychology Interjurisdictional Compact (compact) to allow psychologists licensed by the Department of Regulatory Agencies (DORA) to practice in other compact states (member states) via telepsychology or short-term, in person practice. Specifies requirements for psychologists to participate in the compact. For FY 2018-19, appropriates \$15,984 reappropriated funds and 0.1 to the Department of Law for the provision of legal services to DORA.

**H.B. 18-1224 (LICENSEE DISCIPLINE MEDIATION STATE AGENCY):** Adds a mediation component to the process related to professional disciplinary actions initiated by state agencies. For FY 2018-19,

appropriates \$64,575 reappropriated funds and 0.3 FTE to the Department of Law for the provision of legal services to DORA.

**H.B. 18-1280 (COURT APPOINTEES FOR MARIJUANA BUSINESSES):** Addresses requirements for court-appointed receiverships or similar situations related to a person taking possession of, operating, managing, or controlling a licensed marijuana business. Requires the Marijuana Enforcement Division (MED) in the Department of Revenue to issue temporary registration to any appointee that has certified to the appointing court that he or she is not prohibited from holding a marijuana license and has notified the MED of the court appointment. For FY 2018-19, appropriates \$14,918 reappropriated funds and 0.1 FTE to the Department of Law for the provision of legal services to the Department of Revenue.

**H.B. 18-1322 (LONG BILL):** General appropriations act for FY 2018-19.

**H.B. 18-1353 (DEFENSE COUNSEL IN MUNICIPAL COURT GRANT):** Creates the Defense Counsel on First Appearance Grant Program in the Division of Local Government in the Department of Local Affairs (DOLA) to reimburse local governments, in full or in part, for costs associated with providing counsel to defendants at their first appearance in municipal court. For FY 2018-19, appropriates \$1,598 reappropriated funds to the Department of Law for the provision of legal services to DOLA.

**H.B. 18-1434 (SAFE2TELL PROGRAM NEW DUTIES AND ANNUAL REPORT):** Expands the Safe2Tell Program's duties to include additional training responsibilities and reporting requirements. For FY 2018-19, appropriates \$164,920 cash funds from the Marijuana Tax Cash Fund and 1.6 FTE to the Department of Law.

## APPENDIX C

### FOOTNOTES AND INFORMATION REQUESTS

#### UPDATE ON LONG BILL FOOTNOTES

- 70 Department of Law, Legal Services to State Agencies -- In making this appropriation, it is the General Assembly's intent that hourly billing rates charged by the Department for legal services to state agencies not exceed \$107.66 per hour for attorneys and not exceed \$81.26 per hour for legal assistants, which equates to a blended legal rate of \$103.63 per hour.

**COMMENT:** The Department is billing client agencies at the stated rates.

- 71 Department of Law, Special Purpose, Litigation Management -- It is the General Assembly's intent to grant the Department of Law additional flexibility by allowing the Department to use money appropriated to this line item to address unanticipated state legal needs that arise during FY 2018-19. It is also the General Assembly's intent that money spent from this line item does not require the appropriation of additional FTE and will not be used for any type of salary increase, promotion, reclassification, or bonus related to any present or future FTE employed by the Department of Law. It is furthermore the General Assembly's intent that money spent from this line item will not be used to offset present or future personal services deficits in any division in the Department.

**COMMENT:** The Department is complying with this footnote.

## UPDATE ON REQUESTS FOR INFORMATION

- 1 Department of Law, Legal Services to State Agencies, Personal Services – The Department is requested to provide by November 1, 2018 a report concerning the implementation of changes to the appropriation and billing methodologies for legal services provided to state agencies. As part of the report, the Department is requested to solicit feedback from all client agencies regarding the benefits and challenges associated with the change in methodologies.

**COMMENT:** The Department provided this report on October 1, 2018.

The Department's survey sought feedback on three specific questions:

- Does the new methodology for allocating and paying for legal services better ensure that your organization or program receives the legal advice and representation from the DOL to meet its legal needs for each fiscal year?
- For that agencies or programs that have discretion with fee setting, does the certainty provided through the methodology for allocating and paying for legal services better enable you to set fees to help cover all anticipated costs of the program, including legal?
- Does the new methodology for allocating and paying for legal services simplify your programmatic budget management?

The Department reports that, for the most part, the change in methodology has had a positive reception. 69.0 percent of responses ("yes" or "no change") demonstrate that the change in methodology has had a positive, or no, impact in ensuring legal advice and representation needs were met and that fee setting and budget management decisions are more predictable.

- 2 Department of Law, Criminal Justice and Appellate, Appellate Unit – The Department is requested to provide by November 1, 2019 a report concerning the Appellate Unit's progress in reducing its case backlog, including the following data for FY 2018-19: the number of opening briefs received; the number of answer briefs filed; and the case backlog as of June 30, 2018.

**COMMENT:** The Department is in compliance with this request. The backlog is discussed in the second issue brief.

- 3 Department of Law, Criminal Justice and Appellate, Medicaid Fraud Control Unit – Pursuant to Section 25.5-4-310, C.R.S., the Department of Law's Medicaid Fraud Control Unit is required to submit an annual report by January 15 concerning: actions filed under the "Colorado Medicaid False Claims Act", the amount recovered as a result of such actions, and the amount of related expenditures. The General Assembly requests that the Department also include in this annual report information about expenditures and recoveries related to the Unit's criminal investigations.

**COMMENT:** The Department plans to include as part of its statutorily required January 2018 report the requested information about expenditures and recoveries related to the Unit's criminal investigations.

- 4 Department of Law, Special Purpose, District Attorney Training – Pursuant to Section 20-1-111 (4) (b), C.R.S., the Colorado District Attorneys’ Council (CDAC) allocated these dollars to provide prosecution training, seminar, continuing education programs, and other prosecution related services on behalf of District Attorneys who are members of the CDAC. The CDAC is requested to submit an annual report by November 1 detailing how the District Attorney Training appropriation is spent, including the number and type of training activities provided, the number of district attorney offices served by each type of training activity, the number of deputy district attorneys trained, and detail of the costs categorized by personnel, operating, and travel, for each training effort.

**COMMENT:** The CDAC has not yet provided the requested report. Staff expects to receive it prior to the January 2, 2019 budget submittal.

## APPENDIX D

### DEPARTMENT ANNUAL PERFORMANCE REPORT

Pursuant to Section 2-7-205 (1)(b), C.R.S., the Department of Law is required to publish an **Annual Performance Report** for the *previous fiscal year* by November 1 of each year. This report is to include a summary of the Department's performance plan and most recent performance evaluation for the designated fiscal year. In addition, pursuant to Section 2-7-204 (3)(a)(I), C.R.S., the Department is required to develop a **Performance Plan** and submit the plan for the *current fiscal year* to the Joint Budget Committee and appropriate Joint Committee of Reference by July 1 of each year.

For consideration by the Joint Budget Committee in prioritizing the Department's FY 2019-20 budget request, the FY 2018-19 Annual Performance Plan and Report, titled COLORADO DEPARTMENT OF LAW SMART Government Act Strategic Plan can be found at the following links:

<https://www.colorado.gov/pacific/performancemanagement/departments-performance-plans>

Additionally, the Department of Law's Performance Plan Components document and the previous performance report evaluations can be found at:

<https://coag.gov/resources/budget-accounting>

**JBC Staff Budget Briefing: FY 2019-20**  
**Staff Working Document - Does Not Represent Committee Decision**

**Appendix E: Hours of Legal Services Provided, by Agency (FY 2006-07 to FY 2017-18)**

Department	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Regulatory Agencies	84,589	90,369	98,008	99,427	100,781	95,895	94,212	96,755	99,183	88,489	94,332	93,589
Natural Resources	37,763	40,010	41,237	43,305	44,614	43,856	45,423	50,353	51,430	51,176	49,985	49,184
Revenue	11,133	12,630	12,789	12,836	23,227	37,466	35,215	36,795	39,408	39,888	42,495	46,799
Personnel	38,261	41,171	34,711	31,710	35,295	34,336	31,354	39,410	44,079	47,784	49,202	43,698
Public Health and Environment	23,608	26,495	28,816	28,245	27,475	29,745	31,103	30,845	29,549	31,567	31,254	29,485
Human Services	20,416	19,849	21,072	21,015	19,639	18,862	18,471	18,982	22,022	21,510	23,388	24,321
Transportation	16,467	16,902	18,242	15,846	14,894	15,143	12,392	13,875	15,000	15,516	14,014	14,380
Corrections	13,830	11,748	14,619	18,647	14,619	13,337	16,451	13,800	20,367	18,472	18,996	20,206
Health Care Policy and Financing	11,132	10,249	11,682	10,147	10,982	11,885	11,198	10,152	11,605	9,616	10,950	12,728
Higher Education	11,475	10,142	13,402	13,114	12,879	13,002	11,875	11,794	0	11,790	8,297	12,863
Labor and Employment	7,125	7,926	8,338	8,169	8,881	9,406	7,498	7,007	8,382	8,661	9,793	8,865
State	4,963	4,125	3,066	4,187	5,058	6,645	3,700	3,179	3,275	2,947	2,447	2,181
Governor	1,718	1,268	2,653	6,442	15,003	9,292	5,552	10,113	4,322	3,509	4,785	3,669
Education	4,827	4,786	5,712	4,610	4,080	3,685	3,142	4,799	6,552	6,910	7,821	8,411
Agriculture	3,460	4,315	4,501	4,129	3,841	4,712	4,325	5,508	4,824	5,550	5,143	6,573
Judicial Branch	2,838	2,698	2,949	2,458	1,700	2,145	2,309	3,025	3,057	4,618	4,461	4,304
Public Safety	2,040	1,953	2,146	1,682	2,161	3,856	4,156	4,375	3,717	3,484	3,675	3,817
Local Affairs	1,671	2,462	980	1,917	1,657	1,493	1,588	1,613	1,538	1,190	1,715	3,742
Treasury	599	756	1,220	1,675	1,635	2,186	1,697	1,051	1,068	929	1,644	2,453
Legislative Branch	55	264	152	106	98	66	70	19	34	68	236	52
Military and Veterans Affairs	24	15	43	131	510	124	78	17	44	150	149	564
PERA	10	5	13	29	2	2	7	7	0	14	6	17
Law	<u>289</u>	<u>249</u>	<u>227</u>	<u>77</u>	<u>154</u>	<u>0</u>	<u>0</u>	<u>129</u>	<u>132</u>	<u>354</u>	<u>252</u>	<u>250</u>
<b>GRAND TOTAL</b>	298,291	310,387	326,576	329,907	349,184	357,139	341,814	363,602	369,588	374,194	385,041	392,151
Annual change	250	12,096	16,189	3,331	19,277	7,955	(15,325)	21,788	5,985	4,606	10,847	17,957
Annual % change	0.1%	4.1%	5.2%	1.0%	5.8%	2.3%	-4.3%	6.4%	1.6%	1.2%	2.9%	4.9%